

Kaur (Migration) [2018] AATA 5062 (4 September 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

REVIEW APPLICANT: Miss Manvir Kaur

VISA APPLICANT: Mr Gurpreet Singh

CASE NUMBER: 1708506

DIBP REFERENCE(S): BCC2015/2799128

MEMBER: Grant Chapman

DATE: 4 September 2018

PLACE OF DECISION: Adelaide

DECISION: The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:

- cl.309.211 subclause(2) of Schedule 2 to the Regulations
- cl.309.223 of Schedule 2 to the Regulations
- r.2.03A

Statement made on 04 September 2018 at 4:34pm

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) – Subclass 309 (Partner (Provisional)) visa – genuine relationship – commenced relationship prior to parties divorce – de facto relationship for 12 months – second marriage for both parties – living together in rental property – shared day to day expenses – shared carer responsibility for children – step children and child of the relationship – attend religious and social activities with children – additional documentation submitted to the Tribunal to support claims – decision under review remitted for reconsideration

LEGISLATION

Migration Act 1958 (Cth), ss 5CB, 5F, 65

Migration Regulations 1994 (Cth), rr 1.09A, 1.15A, 2.03A Schedule 2 cls 309.211, 309.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 31 March 2017 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).
2. The visa applicant, Gurpreet Singh, applied for the visa on 24 September 2015 on the basis of his relationship with his sponsor, the review applicant, Manvil Kaur. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter, the primary criteria include cl.309.211(2)(a) which states that the applicant must be the spouse or de facto partner of an Australian citizen.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211(2)(a) because they were not satisfied sufficient evidence had been provided to establish that the applicant and review applicant had a mutual commitment to a shared life to the exclusion of all others.
4. The applicant and review applicant provided to the Tribunal a substantial quantity of additional documentation to support their application, compared with that which had been provided to the delegate.
5. The review applicant appeared before the Tribunal on 1 August 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant.
6. The applicants were represented in relation to the review by their registered migration agent, Amarjit Singh Anand, from ASA Lawyers. The representative attended the Tribunal hearing.
7. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. The issue in the present case is whether, at the time of application, the applicant and review applicant were in a de facto relationship, as defined by section 5CB of the Act and whether, at the time of this decision, they are in a married relationship as defined by section 5F of the Act.
9. In determining the applicants' claims, the Tribunal must first make findings of fact on material matters in dispute. This may involve an assessment of credibility and in so doing, the Tribunal is aware of the need and importance of sensitivity to the circumstances and difficulties applicants may face before the Tribunal, related to their particular situation.
10. The applicants rely on the verbal evidence given before the Tribunal, together with written submissions and supporting documentary evidence provided to the Tribunal, as well as that provided previously to the Department.

Whether the parties are in a spouse or de facto relationship

11. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case, at the time of application, the visa applicant claims to have been the de facto partner of the review applicant who is an Australian citizen and to have been the spouse of the review applicant at the time of this decision.

Were the parties in a de facto relationship?

12. As, at the time of application, the parties were not married to each other under a marriage that is valid for the purposes of the Act, they could not, at that time, satisfy an essential requirement of the spouse relationship but may have met the criteria on the basis of being in a de facto relationship. 'De facto partner' is defined in s.5CB of the Act and provides that a person is in a de facto relationship with another person to whom they are not married if they have a mutual commitment to a shared life to the exclusion of all others, the relationship is genuine and continuing, the couple live together, or do not live separately and apart on a permanent basis and the couple are not related by family: s.5CB(2).
13. In forming an opinion about whether the couple are in a de facto relationship, consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects, the nature of the household and their commitment to each other as set out in r.1.09A(3), which is attached to this decision.

1) Are the parties validly married?

14. If, at the time of this decision, the parties are validly married, the applicant and review applicant may meet the requirements of a spousal relationship but not a de facto relationship. They provided to the Tribunal a Commonwealth of Australia Official Certificate of Marriage, registration [number deleted], confirming that the marriage of Gurpreet Singh and Manvir Kaur was solemnised on 5 December 2017 at the Births, Deaths and Marriages Registration Office, Adelaide, according to Civil Rites. There is no evidence to suggest that the marriage is void. On the evidence, at the time of this decision, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).
15. In forming an opinion about whether the applicant and her sponsor are in a spousal relationship, consideration must be given to all of the same circumstances of the relationship as with a de facto relationship, which are described in paragraph 13 above and which are set out in r.15A, which is attached to this decision.

2) Are the other requirements for a de facto/spousal relationship met?

16. The applicant lodged a valid application for a Class UF subclass 309, Partner (Provisional) visa and Class B, subclass 100, Partner (Migrant) visa on 24 September 2015.
17. As stated in paragraph 4 above, the Tribunal has benefited in reaching its decision from relevant documentation provided by the applicant and review applicant. The consistency between the information provided by these documents and the verbal evidence provided by the applicant and review applicant before the Tribunal, leads the Tribunal to accept

the veracity of the evidence provided. They answered questions from the Tribunal without hesitation or obfuscation. The Tribunal found this evidence to be credible and persuasive. The Tribunal has considered all aspects of the relationship.

18. The Tribunal has examined the following documents in considering the evidence regarding various aspects of the relationship between the applicant and review applicant:

- 1) DIBP Record of Responses – Application for migration to Australia by a Partner.
- 2) DIBP Decision Record, dated 3 April 2017, on application dated 24 September 2015, by the applicant for a Student VET visa, refusing that application.
- 3) Written statement by the applicant attached to his appeal to the Administrative Appeals Tribunal for a review of the refusal of his Student visa.
- 4) Letter, dated 20 July 2017, from the review applicant describing her relationship with the applicant.
- 5) Letter, dated 22 July 2018, from ASA Lawyers on behalf of the applicant and review applicant, describing aspects of the relationship in relation to this Administrative Appeals Tribunal appeal.
- 6) Administrative Appeals Tribunal decision record, dated 8 August 2017 relating to an oral decision of 27 July 2017, affirming the above paragraph 19.2 refusal.
- 7) DIBP Decision Record dated 3 April 2017 on application by Gurpreet Singh, dated 24 September 2015, for a Partner subclass 309/subclass 100 visa, refusing the application.
- 8) Commonwealth Bank Smart Access joint account bank statements for the period 15 July 2013 to 30 June 2018, in the names of Manvir Kaur and Gurpreet Singh of [Address 1], Henley Beach, SA, 5022 changing, in January 2015, to [Address 2], Seaton, SA, 5023,.
- 9) Commonwealth Bank Goal Saver joint bank account bank statements for the period 15 July 2013 to 13 January 2017, in the names of Manvir Kaur and Gurpreet Singh of [Address 1], Henley Beach, SA, 5022 changing, in January 2015, to [Address 2], Seaton, SA, 5023,.
- 10) Commonwealth Bank NetBank Saver joint bank account bank statements in the names of Manvir Kaur and Gurpreet Singh of [Address 2] Seaton, SA, 5023 for the period 29 December 2016 to the 30 June 2018.
- 11) Commonwealth Bank MasterCard Debit Card in the name of Manvir Kaur.
- 12) Commonwealth Bank MasterCard Debit Card in the name of Gurpreet Singh
- 13) National Australia Bank Business Cheque Account in the names of M Kaur and G Singh trading as Vibrant Australia Henley Beach of [Address 1], SA, 5022 for the period 18 August 2014 to 24 February 2015 and of [Address 2], Seaton, SA, 5023, from 25 February 2015 to 29 June 2018.

- 14) ASIC Business Name Record of Registration for the business name Vibrant Australia Henley Beach, registered for three years on 11 August 2014 for a Partnership between M. Kaur and G. Singh of [Address 1], Henley Beach, SA, 5022.
- 15) Letter of Engagement 2014 – 15 from Certified Practising Accountants Max Tax of Prospect, South Australia for M. Kaur and G. Singh, (t/a Vibrant Australia Henley Beach).
- 16) Letter from Australian Government Australian Business Register, dated 7 August 2014, confirming registration of an Australian Business Number (ABN), effective 1 July 2014, in the names of M. Kaur and G. Singh of [Address 1], Henley Beach, SA, 5022.
- 17) Letter from Australian Taxation Office, dated 15 August 2014, confirming registration for GST, effective from 1 July 2014, in the names of M. Kaur and G. Singh of [Address 1] Henley Beach, SA, 5022.
- 18) Australian Government Movement Details Record for Gurpreet Singh.
- 19) Rest Industry Super superannuation fund annual member statement for 2013 – 2014 in the name of Gurpreet Singh of [Address 1] Henley Beach, SA, 5022 naming Manvir Kaur as 100% nominated beneficiary.
- 20) Rest Industry Super superannuation fund annual member statement for 2014 – 2015 in the name of Gurpreet Singh of [Address 2] Seaton, SA, 5023 naming Manvir Kaur as 100% nominated beneficiary.
- 21) Rest Industry Super superannuation fund annual member statement for 2015 – 2016 in the name of Gurpreet Singh of [Address 2] Seaton, SA, 5023 naming Manvir Kaur as 100% nominated beneficiary.
- 22) Rest Industry Super superannuation fund annual member statement for 2016 – 2017 in the name of Gurpreet Singh of [Address 2] Seaton, SA, 5023 naming Manvir Kaur as 100% nominated beneficiary.
- 23) Hesta superannuation fund annual member statement for 2015 – 2016 in the name of Manvir Kaur of [Address 2], Seaton, SA, 5023 naming Gurpreet Singh as 100% nominated beneficiary.
- 24) Ray White Grange Real Estate Addendum to Residential Tenancy Agreement for [Address 1] Henley Beach, dated 22 May 2013 referring to the original commencement of the agreement on 18 January 2012 with Manvir Kaur as sole tenant, listing the new tenants as Manvir Kaur and Gurpreet Singh.
- 25) Ray White Grange Real Estate notice of Residential Tenancy Agreement renewals or extensions for [Address 1] Henley Beach, in the names of Manvir Kaur and Gurpreet Singh, for period of 12 months from 18 January 2014.
- 26) Grange Real Estate confirming lease expiry on 16 January 2015 for [Address 1] Henley Beach and detailing certain refunds to the tenants Manvir Kaur and Gurpreet Singh.

- 27) Government of South Australia, Consumer and Business Services Residential Tenancies Security Bond receipt for M. Kaur and G. Singh of [Address 2], SA, 5023, confirming receipt of a security bond for tenancy at that address.
- 28) REISA Residential Property Tenancy Agreement confirming Manvir Ruby Kaur and Gurpreet Singh as tenants of [Address 2], Seaton from 7 January 2015 to 6 January 2016.
- 29) Phillis Real Estate Renewal of Tenancy Agreement for [Address 2], Seaton SA, 5023 from 7 January 2016 to 6 January 2017 in the names of Manvir Ruby Kaur and Gurpreet Singh.
- 30) Phillis Real Estate Renewal of Tenancy Agreement for [Address 2], Seaton SA, 5023 from 7 January 2017 to 6 January 2018 in the names of Manvir Ruby Kaur and Gurpreet Singh.
- 31) Phillis Real Estate Renewal of Tenancy Agreement for [Address 2], Seaton SA, 5023 from 7 January 2018 to 6 January 2019 in the names of Manvir Ruby Kaur and Gurpreet Singh.
- 32) Government of South Australia, Consumer and Business Services periodic notices of routine premises inspections at [Address 2], Seaton, SA 5023 issued by Phillis Real Estate to Manvir Ruby Kaur and Gurpreet Singh, dated 6 October 2015, 21 January 2016, 30 March 2016, 4 July 2016, 4 October 2016, 23 March 2017, 11 April 2017 (re-scheduled), 27 June 2017, 27 September 2017, 26 October 2017, 10 January 2018.
- 33) Ray White Grange Real Estate tenant Invoices issued to Manvir Kaur and Gurpreet Singh, recouping water usage charges at [Address 1] , SA, 5022 dated 30 July 2013, 1 October 2013, 1 April 2014, 30 April 2014, 1 July 2014, 20 August 2014, 1 October 2014, 2 November 2014, 2 January 2015.
- 34) Phillis Real Estate tenant Invoices issued to Manvir Ruby Kaur and Gurpreet Singh, recouping water usage charges at [Address 2] , Seaton, SA 5023, dated 27 February 2015, 21 May 2015, 28 August 2015, 26 November 2015, 17 February 2016, 31 May 2016, 17 August 2016, 28 November 2016, 15 February 2017, 23 May 2017, 14 January 2018.
- 35) Alinta Energy letter of welcome to new energy plan in the names of Gurpreet Singh and Manvir Kaur, dated 3 April 2014, for [Address 1] Henley Beach, SA 5022.
- 36) Alinta Energy letter of welcome to new energy plan in the names of Gurpreet Singh and Manvir Kaur, dated 9 January 2015, for [Address 2] Seaton, SA 5023.
- 37) School Enrolment Form for 2014 for Mohit Chanana, child of Manvir Kaur, naming her and Gurpreet Singh as the parents of and emergency contacts for the child.
- 38) School Enrolment Form for 2018 for Mohit Chanana and Harshal Chanana, children of Manvir Kaur, naming her is the parent and Gurpreet Singh as the step parent of the children and naming both as emergency contacts for the children.

- 39) Letter from Mr Dan Pearce, Principal, Seaton Park Primary School stating that the school has agreement with the enrolling parents of Harshal and Mohit Chanana and that Manvir Kaur and Gurpreet Singh are the agreed emergency contact, drop off and take home supports.
- 40) SA Ambulance Service Ambulance Cover invoices, dated 15 October 2016 and 15 October 2017, addressed to Mr G Singh of [Address 2] Seaton, SA 5023 for family ambulance service membership in the names of Gurpreet, Manvir, Harshal and Mohit.
- 41) Drawings of family, allegedly by Harshal Chanana purporting to be of Harshal and stepfather, Gurpreet Singh and biological father, Sunil Chanana, showing Harshal happy in the presence of his stepfather and unhappy in the presence of his biological father.
- 42) Federal Circuit Court of Australia Divorce Order dissolving on 9 August 2013 the marriage between Sunil Chanana and Manvir Kaur which had been solemnised on 7 September 2005.
- 43) Decree, effective on 10 October 2017, by Kuldeep Singh Cheema, Additional District Judge, Hoshiarpur, India, granting the petition for divorce by Amrit Jassal from her husband, Gurpreet Singh, relating to their marriage solemnised on 12 February 2012.
- 44) Commonwealth of Australia Official Certificate of Marriage, registration number [deleted], for marriage between Gurpreet Singh and Manvir Kaur solemnised on 5 December 2017 at the Births, Deaths and Marriages Registration Office, Adelaide, according to Civil Rites.
- 45) DIBP Form 888 from Navtej Singh, of Fulham Gardens, South Australia, dated 21 September 2015.
- 46) DIBP Form 888 from Tanroop Singh, of Payneham, South Australia, dated 18 September 2015.
- 47) DIBP Form 888 from Sammi Kamaljeet Singh, of Highbury, South Australia, dated 18 September 2015.
- 48) DIBP Form 888 from Sammi Kamaljeet Singh, of Highbury, South Australia, dated 24 July 2018.
- 49) DIBP Form 888 from Sammi Harjeet Singh, of Highbury, South Australia, dated 23 July 2018.
- 50) DIBP Form 888 from Arvinder Kaur, of Bendigo, Victoria, dated 24 July 2018.
- 51) Affidavit by Parkash Singh and Kewal Kaur, parents of the applicant, dated 23 July 2018.
- 52) Commonwealth of Australia Statutory Declaration by Piara Singh, father of the review applicant, dated 24 July 2018, declared at Welland, South Australia.
- 53) Commonwealth of Australia Statutory Declaration by Amarjit Kaur, mother of the review applicant, dated 24 July 2018, declared at Welland, South Australia.

- 54) South Australian Motor Vehicle Registration Details Certificates, dated 30 July 2013, 30 October 2013, 30 April 2014, 30 July 2014 and 30 October 2014, in the names of Gurpreet Singh and Manvir Kaur of [Address 1] Henley Beach, SA 5022 for Nissan sedan motor vehicle.
- 55) South Australian Motor Vehicle Registration Details Certificates dated 30 July 2017 and 30 January 2018, in the names of Gurpreet Singh and Manvir Kaur of [Address 2] Seaton SA 5023 for Nissan sedan motor vehicle.
- 56) South Australian Motor Vehicle Registration Details Certificates dated 1 March 2018 and 1 June 2018, in the names of Gurpreet Singh and Manvir Kaur of [Address 2] Seaton SA 5023 for Honda sedan motor vehicle.
- 57) Births, Deaths and Marriages Registration Office, Adelaide, South Australia Birth Certificate for the birth of Mehar Kaur, female on [date], naming Gurpreet Singh as father and Manvir Kaur as mother, both of [Address 2] Seaton, SA 5023.
- 58) Certificates of Completion in the name of Gurpreet Singh for various post a secondary vocational education and training courses at Cambridge International College, Adelaide and Jabin Hopkins Institute of Technology, Adelaide.
- 59) Commonwealth Bank Smart Access account bank statements for the period 21 February 2013 to 13 January 2017 in the name of Manvir Kaur of [Address 1], Henley Beach, SA, 5022 changing, in January 2015, to [Address 2], Seaton, SA, 5023,.
- 60) Commonwealth Bank Net bank Saver account bank statements for the period 21 February 2013 to 13 January 2017 in the name of Manvir Kaur of [Address 1] Henley Beach, SA, 5022 changing, in January 2015, to [Address 2] Seaton, SA, 5023,
- 61) Deed of Assignment of "Vibrant Australia" Franchise, dated 2 June 2014 between Gurpreet Singh of [Address 3] Seacliff Park, 5049, South Australia and Manvir Kaur of [Address 1] Henley Beach, 5022, South Australia.
- 62) Australian Federal Police National Police Certificate, dated 29 September 2015, providing a police clearance for Gurpreet Singh of [Address 3], Seacliff Park, SA, 5049, date of birth [deleted].
- 63) Peter F Burns Lease Renewal Agreement in the names of G. Singh and J. Ly for premises at [Address 3] Seacliff Park showing leases in these names from 16 January 2014 to 15 January 2016.
- 64) AGL electricity and gas invoices and a Telstra telephone invoice in the names of Gurpreet Singh and Tan Julie Ly of [Address 3] Seacliff Park, SA, 5049, for May to September 2015.

3)

4) *Background*

19. The applicant was born in the Indian state of Punjab on [date], where he grew up and completed his secondary education. He came to Australia in June 2008 (paragraph 19.18 above) on a student visa and subsequently completed post-secondary vocational

education and training qualifications in Printing and Graphic Arts and then in Multimedia at the Cambridge International College in Adelaide. Later he completed a Diploma of Management at the JB in Hopkins Institute of Technology in Adelaide (paragraph 9.58 above). For a period after completing his courses, the applicant held a 485 visa, intended for him to gain work experience in relation to his qualifications. On 7 February 2012, he returned to India and married Amrit Jassal on 12 February 2012 in an arranged marriage. He returned to Australia on 22 March 2012, expecting his wife to follow after he arranged her visa. However, the applicant confirmed to the Tribunal the statement in his online application that his wife refused to move to Australia, he believes, because she was in another relationship. His wife then launched what is known as a 498a dowry case against him, a criminal case which is often used as a form of blackmail in unsatisfactory arranged marriages in India. This was accompanied by a drawn out divorce process, initiated by his wife, which finally concluded in October 2017 (paragraph 19.43 above).

20. The review applicant was born in India on [date] and after marrying Sunil Chanana on 5 July 2005, migrated to Australia with him in October 2007 and subsequently, became an Australian citizen. They had two sons Harshal, born [date] and Mohit, born [date]. She told the Tribunal that in February 2012, after several years of marriage trauma, they separated and were divorced on 9 August 2013. In Australia, she had obtained qualifications as an aged care worker and worked in an aged care centre between 2008 and 2012. From 2013, she worked with the Royal District Nursing Society as a personal aged care worker for people living alone and in need of such care. She ceased working in November 2017, during her pregnancy.

- *Financial aspects of the relationship*

21. *Joint ownership of assets:* The major assets owned jointly by the applicant and review applicant have been two motor vehicles, a Nissan sedan from 2013 to 2018 and a Honda sedan since early 2018 (paragraphs 19.54 to 19.56 above). Purchase of the Honda arose from the need for a bigger car following the birth of their baby. Also, as they have been living together in unfurnished rental accommodation, jointly, they have accumulated household furniture, a television set and home theatre, refrigerator and washing machine.
22. *Joint liabilities:* Since the commencement of their relationship, the most significant joint liabilities incurred and which continue, are their Residential Tenancy Agreements, first entered into on 22 May 2013 for their rented Henley Beach residence and renewed annually until 16 January 2015 and subsequently the same for their rented Seaton residence from January 2015 until the present (paragraphs 19.24 to 19.32 above). For the same periods, they have had a joint responsibility for the cost of utilities servicing those residences (paragraphs 19.33 to 19.36 above).
23. *Extent of pooling of financial resources:* Shortly after they commenced living together early in 2013, the applicant and review applicant opened a Commonwealth Bank account in joint names (paragraph 19.8 above). Analysis of this account from the outset shows regular deposits being transferred into it from the review applicant's personal bank account, these transferred funds being derived from her employment with the Royal District Nursing Society. This continued until January 2015. Thereafter, the review applicant's salary was paid directly into the joint account. The review applicant closed her personal bank account in January 2017, along with her personal NetBank Saver savings account. The Tribunal accepts the evidence of the applicant that he has been working as a taxi driver and receives payment in cash. The joint bank account shows regular cash deposits, which the Tribunal accepts as being the applicant's wages. The account shows regular withdrawals attributed to both the applicant's and the review applicant's debit cards (paragraphs 19.11 and 19.12 above) for purchases such as groceries, other

household expenses and general living expenses, including rent, entertainment and travel. It shows also debits relating to car expenses and utilities. There are regular transfers to and from the joint Commonwealth Bank savings accounts opened by the applicant and review applicant (paragraphs 19.9 and 19.10 above) in parallel with the above account. The applicant and review applicant, in addition to their employment, purchased and operated, jointly, a cleaning business franchise, Vibrant Australia Henley Beach, employing others, from 11 August 2014 (paragraphs 19.13 to 19.17 above). Over time, this business proved to be only marginally profitable and was sold in August 2016. Nevertheless, it is another example of the applicant and review applicant pooling financial resources.

24. *Any legal obligations owed to the other party:* the applicant and review applicant have the usual legal obligations to each other shared by a married couple. Also, the applicant is a member of the REST Industry Super superannuation fund and has nominated the review applicant as the 100% nominated beneficiary in the event of his death (paragraph 19.20 above). The review applicant is a member of the Hesta superannuation fund and has nominated the applicant as the 100% nominated beneficiary in the event of her death (paragraph 19.21 above).

25. *Any sharing of day-to-day household expenses:* As explained in paragraph 24 above, analysis of the joint bank accounts shows that the applicant and review applicant share completely their day-to-day household expenses.

26. *Financial aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence in support of the financial aspects of the relationship as being one of high interdependence, which exhibits a mutual commitment to a shared life the exclusion of others, being a genuine and continuing relationship and that they are living together on a permanent basis.

- *The nature of the household*

27. *Any joint responsibility for the care and support of children:* The review applicant has two sons from her previous marriage, Harshal, currently aged 11 and Mohit, currently aged 8. Separately, in evidence at the Tribunal Hearing the applicant and review applicant gave verbal evidence regarding the shared responsibility for these two children as stepfather and mother, along with their care for their recently born baby. Written evidence has been provided also on this matter (paragraphs 19.1, 19.4, 19.5, 19.37, 19.38, 19.39, 19.40 and 19.41 above). In summary, these documents show the strong support which the applicant has given to the review applicant in caring for her children. This includes mostly working night shift, rather than dayshift, in his taxi driving job so that he is able to take the children to school and pick them up when the review applicant is working. He is recognised by the school as having this responsibility and also as being an emergency contact for the children. The applicant and review applicant claimed that Mohit is unaware that the applicant is not his biological father. They claimed also that the drawings show the positive relationship between Harshal and the applicant, to whom he refers as dad, compared with the negative relationship with his biological father, to whom he refers as papa. The Tribunal accepts the veracity of these claims. It has identified expenditure items on the joint bank account which it reasonably concludes relate to expenditure supporting children. With regard to the new baby and the review applicant having ceased work during her pregnancy from October 2017, the applicant has taken sole responsibility, save for government family payments, for earning the family income to enable the review applicant to be a full-time mother during the baby's early years.

28. *The living arrangements of the applicant/review applicant:* The applicant and review applicant told the Tribunal Hearing that their joint household commenced on 2 February

2013, consequent on the strengthening of their relationship from their first meeting on 25 September 2012. The applicant said that he took a friend and his wife with him to meet the review applicant's mother when she was visiting her daughter early in 2013 and discussed with the mother the shared wish of the applicant and review applicant to live together and eventually, get married when his divorce was finalised. The mother gave her blessing to this arrangement, as is confirmed by documentation (paragraph 19.52 above). The applicant said that, at about the same time, he had informed his parents in India of his intention to live with the review applicant and they approved the arrangement. This is confirmed by documentation (paragraph 19.51 above). For nearly two years, the couple lived in a unit at Henley Beach until moving to a house at Seaton in January 2015. Independent documentation (paragraph 16.24 above) confirms that the couple were living together from at least 22 May 2013 and the Tribunal accepts the verbal evidence that this actually commenced in February 2013. They told the Tribunal that the applicant's brother has been part of their household since 2013 and since he got married in 2017, his wife has lived with them also. When questioned about how household costs are shared in this situation, both the applicant and review applicant told the Tribunal that, according to Indian culture, the applicant, as the elder brother, provides most of the resources. However, they do receive some financial contribution, together with some assistance with household chores from that couple. There is substantial documentation to confirm the veracity of these claims, both directly, such as real estate tenancy agreements and related invoices (paragraphs 19.23 to 19.36 above) and indirectly, such as bank statements and other documents, giving the above two addresses as being those of the applicant and review applicant.

29. *Any sharing of responsibility for housework:* The applicant and review applicant told the Tribunal Hearing that both undertake housekeeping and related responsibilities, such as cooking, cleaning, washing, these chores being split according to which has free time available. The applicant takes responsibility for the bathroom, garden and motor vehicle maintenance. More recently, the applicant's sister-in-law has provided some assistance with indoor chores.

30. *Household aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the household being one which demonstrates the relationship between the applicant and review applicant as being a mutual commitment to a shared life to the exclusion of others, being a genuine and continuing relationship and that they are living together on a permanent basis.

- *The social aspects of the relationship*

31. *Whether the persons have represented themselves to other people as having been in a de facto relationship and subsequently, a married relationship:* The applicant and review applicant told the Tribunal Hearing that they undertake a range of social activities at which they present themselves as a couple. This includes regular weekly attendance as part of the congregation at the Hindu temple, as well as regular dinners with family and close friends. Their agent referred to photographs of these occasions having been provided to the Tribunal (paragraph 19.5 above) but these have not been received. However, several of the Form 888's refer to their social activities as a couple (paragraphs 19.45 to 19.50 above). Both sets of parents accept that they are a couple in a genuine relationship and interact with each other in India (paragraphs 19.51 to 19.53 above). The Tribunal accepts that the couple represented themselves to others previously as being in a de facto relationship and currently as being married.

32. *The opinion of friends and acquaintances about the nature of the relationship:* All six of the Form 888's provided by family members and friends who know the couple best, together with the Statutory Declarations of the father and mother of the review applicant

and the combined affidavit of the father and mother of the applicant confidently assert the genuineness of the relationship between the applicant and review applicant. The following quotes provide a few examples of this, drawn from the Form 888's: "I believe that the relationship between both of them is true and strong. The applicant share very strong relationship with kids as well..... he treat the kids and his partner with love and care" (Navtej Singh); "I believe this relationship is genuine, as both of them had gone through same difficult time in their lives due to their previous marriages and they supported and still supporting each other..... Manvir's parents are currently in Australia and they are all staying together.....Gurpreet's parents will be visiting them soon" (Arvinder Kaur, applicant's sister); "I am very happy for Manvir, as they are really doing well as a family. Yes I truly believe their relationship is genuine and they both are in love" (Harjeet Singh Sammi); "Yes I believe their relationship is genuine as both are happily married couple with a recent birth of a baby. They are together since 2013..... Living together since then, have attended a lot of social gatherings together and they seem to be a happy couple" (Kamaljeet Singh Sammi, 2018); "Gurpreet and Manvir share a very loving and true relationship which you can tell by spending time with them." (Kamaljeet Singh Sammi, 2015); "I truly believe the relation is true and they have been sharing their responsibilities. I have seen the applicant have taken all the responsibilities of children and genuinely love and care. We get together twice a month" (Tanroop Singh); "We are very happy and fully satisfied from their understanding and married life." (Piara Singh, review applicant's father).

33. *Any basis on which the persons plan and undertake joint social activities:* As described in paragraph 32 above, the applicant and review applicant attend the Hindu temple together regularly, dinner with friends and recently have become involved with the review applicant's children's sport.

34. *Social aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the social aspects of the relationship between the applicant and review applicant as being one which exhibits a mutual commitment to a shared life the exclusion of others, being a genuine and continuing relationship and that they are living together on a permanent basis.

- *The nature of the persons' commitment to each other*

35. *The duration of the relationship:* The applicant and review applicant both claimed they met each other on the dating website Oasis Active early in September 2012. Both had emerged from traumatic relationships but were still married. The applicant's wife refused to move from India to Australia following an arranged marriage in India with the applicant, who was living in Australia on a student visa. The review applicant had left the relationship in which she claimed to have suffered violence. The review applicant claimed that this experience made her wary in her initial online approach to the applicant but eventually agreed to exchange photographs and phone numbers. They agreed to meet face-to-face on 25 September 2012 for coffee and a chat at the Marion Shopping Centre, followed by attending a movie. They found each other to be caring and understanding of each other's circumstances arising from their marriages. The relationship continued to develop in a positive way as they spent time together in the latter part of 2012 and they decided they wanted to live together and planned for the applicant to move in with the review applicant. However, prior to that, the applicant took the initiative of discussing their plans with the review applicant's mother, who was visiting her daughter at the time. He took with him to this meeting one of his best friends and the friend's wife. The review applicant had discussed their intention with her mother and responded positively to the applicant's approach to her, approving the decision to live together. The applicant also discussed the matter by telephone with his parents in India, who gave a positive response. Although they had jointly decided already their wish to get

married, neither the applicant nor review applicant was divorced at that stage, so they entered into a de facto relationship and commenced living together on 4 February 2013 at Henley Beach, two years later moving to Seaton. They claim to have maintained an exclusive relationship with each other for more than five years and in fact the only time apart during that period has been two visits by the review applicant to India for family weddings, during which she has stayed with the applicant's parents. All of the relevant documentation listed in paragraph 19 above and examined in detail by the Tribunal confirms the veracity of these claims. Hence, the relationship had existed for more than two years at the time of this visa application and at the time of this decision has been maintained for some five and a half years.

36. *The length of time during which the persons have lived together:* As described in paragraphs 29 and 36 above, the Tribunal accepts that the applicant and sponsor have lived together, first at Henley Beach and subsequently at Seaton, since February 2013, apart from two brief visits to India by the review applicant in 2014 and 2016 for her brother's and cousin's weddings, respectively.
37. *The degree of companionship and emotional support the persons draw from each other:* As described by the couple, mutual emotional support has been a key factor in the success of their relationship. Both had suffered different but traumatic experiences from their first marriages. The review applicant said that the applicant's soft-spoken and caring nature was a strong initial attraction for her and this has continued to be the case as the relationship has continued and combines with his hard-working attitude. The applicant described himself as depressed when he met the review applicant as a result of the experience with his then wife refusing to come to Australia following their arranged marriage. He said the development of his relationship with the review applicant has encouraged and uplifted him. The review applicant especially appreciates the attention the applicant gives to her children from her previous marriage. He also encourages her love of sketching and singing. Both separately expressed the view that they had wanted to get married since the beginning of the relationship but had been unable to do so until their divorces were finalised and in particular, that of the applicant, which occurred in October 2017. Immediately, they made plans for their wedding which took place on 5 December 2017 in the company of locally resident relatives and close friends, with a subsequent larger group of 32 people attending a reception on 10 December 2017. From the couple's evidence at the Tribunal Hearing, it was evident that they have discussed their future together, which includes purchasing a home as soon as they have saved sufficient for what they regard as an adequate deposit and the review applicant has been able to return to work when their baby is older. Currently, they have accumulated savings of \$19,000 with their savings have been as high as \$50,000 within the past 12 months, prior to the transfer of \$20,000 to the applicant's brother was living with them. If it is possible for him to both earn sufficient income to support his family and undertake study at the same time, the applicant would like to return to tertiary studies, ideally in some field of engineering but may have to settle for a course which is less time-consuming.
38. *Whether the persons see the relationship as a long-term one:* The Tribunal accepts that it is the intent of the applicant and review applicant that the relationship is long-term. All the evidence points to the fact that the couple have maintained a committed relationship for more than five years and they have mutually consistent views about their future together. The fact that despite an apparently successful de facto relationship was maintained for nearly five years, immediately they were free to do so, the couple entered into a marriage relationship. This is a strong demonstration of intent.
39. *Commitment conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the persons' commitment to each other as being one where the relationship between the applicant and review applicant exhibits a

mutual commitment to a shared life the exclusion of others, being a genuine and continuing relationship and that they are living together on a permanent basis.

- *Any other relevant considerations*

40. The Tribunal is aware that on 27 August 2014 the applicant lodged an application for an 820 Partner visa through his then agent Mandeep Singh who, despite being informed by the applicant that he was still married, failed to include that information in the application. On 1 September 2015, he received mail from the Department inviting him to comment on adverse information of not having declared his existing marriage. His agent failed to explain to the applicant the reason for, or accept responsibility for the error. Lawyers who the applicant consulted advised him of the negative consequences of failing to satisfy Public Interest Criterion 4020. Therefore, he decided to withdraw that application and lodge a new application at an appropriate time. He was in a position to lodge the 309 Partner which is the subject of this current review while offshore on 24 September 2015.
41. The Tribunal is aware also that on 25 September 2015, the applicant lodged a further Student visa application. Given the extent of his relationship with the review applicant by that time, the Tribunal accepts that both the delegate and the Tribunal made the correct initial and review decision in rejecting that application. In essence, both decided that they could not accept that the applicant had an intention to remain only temporarily in Australia for the purposes of study. Given the nature of his relationship with the review applicant and the fact that he had lodged a Partner visa application, they determined that it was his intention to remain in Australia for the long-term.
42. The Tribunal notes these facts but finds they are not detrimental to the application currently under review by the Tribunal.
43. The Tribunal discovered in the applicant's Indian divorce document dated 10 October 2017 (paragraph 18.43 above) that his address was given as 2/29 Lindsay Avenue, Edward Town (sic), SA, 5039, Australia, which is an address different from that at which he claimed to be living with the sponsor at that date. Subsequent to the Hearing, the Tribunal sought an explanation from the applicant, through his agent, of this contradictory evidence. The agent has advised the Tribunal that this was the applicant's address in Adelaide immediately upon his return from India after getting married, that he had not lived at that address since mid – 2012 but had not advised the Indian Court of his subsequent addresses. The Tribunal accepts the veracity of this explanation.
44. Subsequent to the Hearing the Tribunal queried the applicant, through his agent, as to why the cleaning franchise Deed of Assignment, dated 2 June 2014 (paragraph 18.61 above) supposedly transferring that particular franchise from a third party to the applicant and sponsor instead showed a transfer from Gurpreet Singh of [Address 3], Seaclyff Park, SA, 5049 to Manvir Kaur. The Tribunal queried also this apparent Seaclyff Park address for the applicant, being different from that of the sponsor at a time when the two claimed to be living together. The applicant's agent was able to provide documentary evidence of the existence of two Gurpreet Singh's (paragraphs 18.62 to 18.64 above), as both happened to be his clients and that the one living at Seaclyff Park at that time was different from the visa applicant. In particular, the Australian Federal Police document (paragraph 18.62 above) shows that the Gurpreet Singh resident at Seaclyff Park has a different date of birth from the applicant. The Tribunal accepts that the applicant did not live at Seaclyff Park or separately from the sponsor at this time.

- *Whether the parties are related by family*

45. The Tribunal has determined that the couple are not related by family.

- **Conclusion**

46. In summary, the applicant and review applicant have been in a continuous relationship and have lived together continuously since February 2013. During that time they have shared financial and household responsibilities, including the caring and nurturing responsibilities for the review applicant's two young children and their newborn baby. They have socialised openly as being in a de facto relationship and more recently, a married relationship. They have described detailed plans for the future and are in the process of giving effect to those plans. Their family and friends have stated strong support for them being in a genuine, continuing relationship. They are not related by family.
47. For the above reasons, having carefully considered each of the prescribed factors under s.5CB(2)(a–d), the Tribunal is satisfied that at the time of application the visa applicant and the review applicant were in a genuine and continuing relationship and had a mutual commitment to a shared life together to the exclusion of all others and live together, or not separately or apart on a permanent basis.
48. On the basis of the above, the Tribunal is satisfied that the requirements of s.5CB(2) are met at the time the visa application was made.
49. Given that the same prescribed factors apply to s.5F(2), the Tribunal is satisfied that the requirements of s.5F(2) also are met at the time of this decision.
50. Therefore, the visa applicant meets cl.309.211 and cl.309.221.

Are the additional criteria for a de facto relationship met?

51. Persons claiming to be in a de facto relationship for a Partner visa also must meet the additional criteria in r.2.03A. Both members of the couple must be at least 18 years old: r.2.03A(2). In this case, at the time of application, the applicant and the sponsor were at least 18 years old.
52. The applicant must have been in the de facto relationship for at least the 12 month period ending immediately before the date of the application: r.2.03A(3). This requirement will not apply in limited circumstances, such as: where the de facto relationship has been registered under a relevant State or Territory law (for applications made on or after 9 November 2009); where the applicant can establish compelling and compassionate circumstances for the grant of the visa; or in certain circumstances where the sponsor held, holds or is applying for a permanent humanitarian visa.
53. There is no evidence that the relationship is registered under a relevant State or Territory law or that the sponsor held, holds or is applying for a permanent humanitarian visa, so they must meet the 12 month requirement. The evidence discussed in paragraphs 29, 36 and 37 above leads the Tribunal to conclude that the applicant and review applicant had been in a de facto relationship for some two and a half years prior to the visa application. Accordingly, the Tribunal is satisfied that the applicant had been in the de facto relationship for at least the 12 month period ending immediately before the date of the application.
54. For these reasons the Tribunal is satisfied that the visa applicant meets the additional criteria prescribed in r.2.03A.
55. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 309 visa.

DECISION

56. The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner) (Provisional)) visa:

- cl.309.211 subclause (2) of Schedule 2 to the Regulations
- cl.309.223 of Schedule 2 to the Regulations
- r.2.03A

Grant Chapman
Senior Member

ATTACHMENT - Extract from Migration Regulations 1994

1.09A De facto partner and de facto relationship

- (1) For subsection 5CB (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5CB (2) (a), (b), (c) and (d) of the Act exist.

Note 1 See regulation 2.03A for the prescribed criteria applicable to de facto partners.

Note 2 The effect of subsection 5CB (1) of the Act is that a person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.

Subsection 5CB (2) sets out conditions about whether a de facto relationship exists, and subsection 5CB (3) permits the regulations to make arrangements in relation to the determination of whether 1 or more of those conditions exist.

- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;
- the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).